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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,547

03/26/2004

Patrick Thompson

2316.926USRE

9367

23552

7590

03/30/2007

MERCHANT & GOULD PC

P.O. BOX 2903

MINNEAPOLIS, MN 55402-0903

EXAMINER

CONNELLY CUSHWA, MICHELLE R

ART UNIT

PAPER NUMBER

2874

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/810,547	THOMPSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michelle R. Connelly-Cushwa	2874	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-16,35-39,49-51 and 53-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-16,35-39,49-51 and 53-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's Amendment filed March 2, 2007 has been fully considered and entered.

### ***Response to Arguments***

Applicant's arguments, see pages 3-4, filed March 2, 2007, with respect to pending claims 1, 3-10, 12-16, 35-39, 49-51 and 53-68 have been fully considered and are persuasive. Accordingly, the rejections set forth in the previous Office action have been withdrawn.

### ***Reissue Applications***

#### ***Oath/Declaration***

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

At least one error which is relied upon to support the reissue application must be set forth in the oath/declaration (see MPEP § 1414).

As discussed in MPEP § 1414 II(B), in identifying an error it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid. Applicant's oath/declaration filed on March 26, 2004 does not identify what word(s), phrase(s) or expression(s) in the specification or in an original claims render the original patent wholly or partly inoperative or invalid.

As discussed in MPEP § 1414 II(C), it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. Any error in a claim must be identified by reference to the specific claim language that is in error. It is not sufficient to state that the application is being filed to correct errors that may be noted from the change made by adding a new claim.

It is noted that the Amendment to claim 1 filed March 2, 2007 also introduces an error into the application because the Amendment was made after the filing of the declaration.

### ***Claims***

Claims 1, 3-10, 12-16, 35-39, 49-51 and 53-68 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

### ***Specification***

The specification is objected to because it does not contain a cross-reference to divisional reissue application 11/397,885. See MPEP 1451.

An example of the suggested language is as follows:

Notice: More than one reissue application has been filed for the reissue of Patent No. 9,999,999. The reissue applications are application numbers 09/999,994 (the present application), 09/999,995, and 09/999,998, all of which are divisional reissues of Patent No. 9,999,999.


Art Unit: 2874

**Conclusion**

Any inquiry concerning the merits of this communication should be directed to Examiner Michelle R. Connelly-Cushwa at telephone number (571) 272-2345. The examiner can normally be reached 9:00 AM to 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney B. Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general or clerical nature should be directed to the Technology Center 2800 receptionist at telephone number (571) 272-1562.



Michelle R. Connelly-Cushwa

Patent Examiner

March 26, 2007